UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

BBC CHARTERING CARRIERS GmbH & CO. KG	§	
Plaintiff	§	
	§	CIVIL ACTION NO.: 4:17-cv-1118
V.	§	
	§	**ADMIRALTY**
GENERAL ELECTRIC COMPANY,	§	Pursuant to Rule 9(h) of the Federal Rules of Civil Procedure
DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO., LTD,	§	
AND	§	
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.	§	
Defendants	§	

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COMPLAINT FOR DECLARATORY JUDGMENT

The complainant, BBC Chartering Carriers GmbH & Co. KG ("BBC"), files this Complaint for Declaratory Judgment and respectfully represents as follows:

I.

BBC requests that this Court declare the rights, liabilities, and other legal relationships under a contract for the carriage of goods by sea, and to determine rights arising under said contract.

II.

The defendant, General Electric Company ("GE"), is an entity that would be affected by this declaration.

II(a).

Doosan Heavy Industries & Construction Co., Ltd. ("Doosan") is an entity that would be affected by this declaration.

II(b).

Expeditors International of Washington, Inc. ("Expeditors") is an entity that would be affected by this declaration.

III.

BBC is a foreign entity organized and existing under the laws of a foreign nation, with its principal offices in Leer, Germany, and which was and is engaged in the business of operating vessels for the carriage of goods by sea. Specific to this action, BBC is the charterer of the M/V BBC TENNESSEE.

IV.

On information and belief, GE is a domestic corporation organized and existing under the laws of the State of New York, with its principal place of business in Boston, Massachusetts, and which is doing business within this district. Specifically, GE, as the consignee, is a party to the contract of affreightment evidenced by the Bill of Lading, more fully described herein, under which goods were to be shipped from Masan, South Korea, to Albany, New York.

IV(a).

On information and belief, Doosan is a foreign corporation organized and existing under the laws of South Korea. Specifically, and upon further information and belief, Doosan was the shipper of the goods, and Doosan and/or its authorized agent entered into the contract of affreightment evidenced by the Bill of Lading, more fully described herein, under which the goods were shipped from Masan, South Korea, to Albany, New York.

IV(b).

On information and belief, Expeditors is a domestic corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, Washington. Specifically, and upon further information and belief, Expeditors was the notify party on the contract of affreightment evidenced by the Bill of Lading, more fully described herein, under which the goods were shipped from Masan, South Korea, to Albany, New York.

V.

The BBC TENNESSEE, an ocean going vessel engaged in the common carriage of goods by sea for hire, carried the cargo at the center of this dispute from Masan, South Korea, to Albany, New York, with carriage beginning on or about February 10, 2017.

VI.

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and this Court has jurisdiction over this action under 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, the Carriage of Goods by Sea Act, Pub. L. No. 521, 49 Stat. 1207 (1936), *reprinted in* 46 U.S.C. §30701 note (2012) ("COGSA"), which BBC asserts is applicable to the contract for carriage both under its terms and by operation of law. This Court also has jurisdiction over this action under 28 U.S.C. § 1333, as this is a claim that arises under this Court's admiralty and maritime jurisdiction.

VII.

On or about January 13, 2017, BBC entered into a booking note for a shipment of cargo to be carried from Masan, South Korea, to Albany, New York. *See* Booking Note No. 17-019, dated January 13, 2017, attached hereto as Exhibit A (the "Booking Note").

VIII.

The cargo, ultimately consisting of one package said to contain a "stacked stator LSTG (LONG-PHU#2)," was loaded aboard the BBC TENNESSEE in Masan, South Korea. At that time BBC issued a Bill of Lading for the cargo. *See* Bill of Lading No. BBCH10Q5027MA01, attached hereto as Exhibit B (the "Bill of Lading").

IX.

During the voyage, the BBC TENNESSEE encountered heavy weather and exceptionally large swells, causing the vessel to pitch and roll significantly. To the extent any cargo was damaged during the voyage and while in the custody of BBC, such damage was caused by the vessel's pitching and rolling, insufficient packing or lashing of the cargo, the master's error in navigating or managing the BBC TENNESSEE, or perils of the sea or acts of God.

X.

The Bill of Lading and the terms and conditions of both the Bill of Lading and as incorporated into the Booking Note provide as follows:

> PARTICULARS DECLARED BY THE SHIPPER BUT NOT ACKNOWLEDGED BY THE CARRIER
>
> Number and kind of packages; description of cargo
> SAID TO BE
>
> 1 PACKAGE STC
>
> STACKED STATOR LSTG (LONG-PHU#2)
> 1030 X 410 X 432 CM
>
> Gross weight, KG SAID TO WEIGH
> 278,173 KGS
>
> Measurement, m^3
> SAID TO MEASURE
> 182.4 CBM

* * *

Special Clauses

B. U.S. Trade Period of Responsibility

(i) In case the Contract evidenced by this Bill of Lading is subject to the U.S. Carriage of Goods by Sea Act of the United States of America 1936 (U.S. COGSA), then he provisions stated in said Act shall govern before loading, and after discharge and throughout the entire time the cargo is in the Carrier's custody and in which event freight shall be payable on the cargo coming into the Carrier's custody. For US trades, the terms on file with the U.S. Federal Maritime Commission shall apply to such shipments.

(ii) If the U.S. COGSA applies, and unless the nature and value of the cargo has been declared by the shipper before the cargo has been handed over to the Carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss or damage to the cargo in any amount exceeding USD500 per package or customary freight unit. If despite the provisions of subclause 3(a), the Carrier is found to be liable for deck cargo, then all limitations and defenses available under U.S. COGSA (or other applicable regime) shall apply.

(iii) For purposes of calculating the Carrier's liability under subsection (ii), the number of pieces or unites listed in the box on the face of this Bill of Lading headed "Number and kind of packages; description of cargo" shall conclusively establish the number of packages. If the cargo being carried is not a package, then unless expressly stated otherwise, freight is calculated on the number of such unpackaged vehicles or other physical pieces of unpackaged cargo, including articles or things of any description whatsoever except goods shipped in bulk, and each such piece of unpackaged cargo shall conclusively be deemed one customary freight unit.

(iv) Whenever the U.S. COGSA applies, whether by virtue of carriage of cargo to or from the U.S. or otherwise, any dispute arising out of or in connection with the Contract evidenced by this Bill of Lading shall be exclusively determined by the United States District Court for the Southern District of Texas, and in accordance with the laws of the United States. Merchant further agrees to submit to the jurisdiction of the Southern District of Texas and to waive any and all objections to venue.

See Exhibit B.

XI.

Although BBC provided the defendants with the opportunity to declare a value of the cargo on the face of the Bill of Lading, there is no declared value for the cargo on either document. *See* Exhibits A and B.

XII.

To the extent GE will allege liability on the part of BBC for the alleged damage to the cargo, BBC and GE are entities interested under the contract for carriage within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

XIII.

As an ocean carrier under COGSA, BBC is not liable for loss to cargo resulting from excepted causes. Here, any damage to the cargo shipped pursuant to the Bill of Lading was exclusively caused by one or more excepted causes, including, but not limited to, an error in navigation and/or management of the BBC TENNESSEE, insufficient packing, peril(s) of the sea, and/or an act of God. BBC is therefore not liable for any loss or damage to the cargo.

XIV.

Any alleged liability on the part of BBC is specifically denied. Even assuming, however, that BBC is responsible for any damage or loss of the cargo, such damage or loss is subject to the U.S. COGSA's limitations, including, but not limited to, the $500.00 per package limitation.

WHEREFORE, the complainant, BBC Chartering Carriers GmbH & Co. KG, prays that the defendants, General Electric Company and Doosan Heavy Industries & Construction Co., Ltd., be cited and served, and that after all legal delays and proceedings, this Court declare that:

1. The exceptions provided for by COGSA are a complete liability shield preventing any recovery by the defendants from BBC for the alleged damage and/or loss to the cargo.

2. In the alternative, the limitation of liability provisions in COGSA apply to the contract of carriage, thus limiting any potential recovery of the defendants from BBC to $500.00 per package for the alleged damage and/or loss to the cargo.

3. In the further alternative, that BBC is entitled to the benefits of the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq*., as the alleged damage and/or loss to the cargo, if any, occurred without BBC's privity or knowledge.

BBC further prays for all general and equitable relief to which it may be entitled.

Respectfully submitted,

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